(2015) 10 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 239/2010

United India Insurance Company Ltd. APPELLANT

Vs

Ashokraj and Others RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 10 RAJ CK 0044

Hon'ble Judges : J.K. Ranka, J.

Bench : Single Bench

Advocate : Archana Mantri, for the Appellant; Sanjay Singhal, for the Respondent

Final Decision : Allowed

Judgement

J.K. Ranka, J.—The instant appeal is directed against the award dated 3.11.2009 passed by Motor Accident Claims Tribunal, Baran, in Claim Case No. 16/2007.

2. The brief facts noticed are that on 27.10.2006 the respondent is said to be going on his motorcycle bearing No. RJ28 03M 3878, when a tractor bearing No. RJ28 R 6609, being driven by Raju son of Chand Ali in a high speed and in a rash and negligent manner, came and hit the motorcycle of the respondent, consequent thereto the respondent suffered severe and grievous injuries and suffered disability.

3. The Tribunal, analysing the material on record and after considering all the issues, allowed the claim to the extent of Rs. 95,547/-, which is assailed herein.

4. Learned counsel for the appellant contended that award of the Tribunal is perverse in the sense that driver of the tractor had no valid license, and neither the license was placed on record nor any other evidence to suggest that Raju had valid license. It is further contended by her that since there was no valid license placed on record, therefore, at-least the Insurance Company cannot be held liable to pay the award amount as liability has been fastened wrongly. She further contended that an application was moved on behalf of the appellant

before the Tribunal on 21.9.2007, specifically on the above issue and despite repeated directives neither Raju produced the license nor the claimant-respondents submitted a valid license, and when there was no valid license, the claim ought to have been rejected, rather than deciding in favour of the claimant-respondents. She further contended that the amount allowed at Rs. 95,547/- is also highly excessive and unreasonable as hardly any injury was suffered and even otherwise, as per the disability certificate, it was only 5% and on a mere disability of 5%, that too partial, the amount allowed is highly excessive and unreasonable. She also contended that in the alternative as well, recovery rights of the said amount may be given to the appellant to recover the amount from the driver/owner of the offending tractor. In support of her contentions she relied on the judgment of this court in the case of National Insurance Company Ltd. Vs. Sarbati--> .

5. Per contra, Mr. Sanjay Singhal, learned counsel for the claimant-respondent, contended that insofar as the claimant-respondent is concerned, it is admitted case that the tractor hit the motorcycle and consequent thereto the claimant-respondent received severe and grievous injuries, and the Tribunal has rightly allowed the said amount in favour of the claimant-respondent. He further contended that though the claimant had grievance of the claim being allowed on the lower side as on account of the said accident even till today he is unable to lead a proper life, as he suffered fractures in leg, shoulder and other parts of his body, and he was admitted in the hospital for almost nine days, and a rod was also placed in his leg, thus the counsel contended that the present appeal deserves to be dismissed.

6. Mr. V.S. Yadav, appearing on behalf of respondent No. 6, contends that no notice was required to be issued in the name of New India Assurance Company Ltd. as even before the Tribunal name of New India Assurance Company Ltd., which was represented by him, was deleted and unnecessary notice was issued and the New India Assurance Company Ltd. had to put in appearance. He contended that he has nothing to submit in this case.

7. I have considered the arguments advanced by the counsel for the parties. Admittedly, the accident has certainly taken place on account of rash and negligent driving by Raju, driver of the tractor bearing No. RJ28 R 6609, and the Tribunal has found as a finding of fact that the driver was negligent. However, equally important fact is that Raju did not have an effective license or if he had the same, that was not placed on record before the Tribunal. It is also an admitted case that an application was moved on behalf of the appellant before the Tribunal about placing of the license of Raju, and the Tribunal has observed that though copy of this application was provided to the counsel appearing on behalf of the respondent, but the same was not placed on record. Admittedly, Raju the driver of the tractor as well as Chand Ali, Abbas Ali and Sultan, who are said to be owners of the tractor, were represented by a counsel before the Tribunal, however in my view, the Tribunal has not considered the issue properly

and has simply observed that the appellant-Insurance Company could not prove its defence, which in my view is not proper. Once there is a specific allegation that Raju had no valid license, therefore, to say that further evidence ought to have been led by the appellant, was not proper.

8. This court in the case of National Insurance Company Ltd. v. Sarbati (supra), had an occasion to consider identical issue, and after considering various judgments of the Hon''ble Apex Court, has observed thus:--

"19. In the light of the aforesaid well settled legal position, if the facts of the present case are considered, I am of the view that learned Tribunal has went wrong to fasten the liability to make payment of the compensation on the appellant-Insurance Company. As already said, it has been established that the driver of the offending vehicle at the time of the accident was having no valid and effective driving license to drive any type of the vehicle including heavy transport vehicle. In the present case, the owner and driver of the offending vehicle did not appear before the Tribunal and the owner failed to explain in what circumstances the offending vehicle was being driven by a person having no valid and effective driving license. It is also relevant to state that notice was sent on behalf of the appellant-Insurance Company to the respondent-owner, but neither reply to the notice was sent nor particulars of the driving license were provided to the appellant. I am of the considered view that inaction on the part of the respondent-owner in this regard is clear indication of the fact that it was in his knowledge that the respondent-driver is not having a valid and effective driving license to drive any type of vehicle including a Heavy Transport Vehicle, but even then he deliberately permitted him to drive the same. I am also of the view that it was the duty of the owner to appear as a witness before the Tribunal and to explain his position in what circumstances the offending vehicle was driven by a person having no valid and effective driving license and in absence of the same adverse inference is to be drawn against him and it must be held that he consciously allowed a person to drive his vehicle having no valid and effective driving license. In the present case, the owner did not raise any contention that he has used due diligence in allowing the driver to drive the vehicle.

24. Consequently, by setting aside the judgment and award dated 10.12.2002 passed by the Motor Accident Claims Tribunal and Additional District Judge No. 1, Kishangarh Bas (District Alwar) in Motor Accident Claims Case No. 36/1996, the appeal filed by the appellant-Insurance Company is allowed with costs of Rs. 10,000/- payable by the respondent owner to the appellant. The claimant-respondents are free to recover the amount of compensation from the owner and driver of the vehicle involved in the accident in accordance with the procedure prescribed by law. However, it is made clear that the amount already paid by the appellant-Insurance Company under Section 140 of the Act would not be liable to be refunded to it by the claimants, but the appellant may recover the same from the owner/driver of the offending vehicle by following the procedure prescribed by law."

9. In the present appeal as well, though notices have been directed to be served on the driver/owners, being respondent Nos. 2 to 5, and although notices have been served but they have not chosen to put in appearance before this court, which in other words also proves that they have not proved their own case of producing license neither before the Tribunal nor before this court.

10. Raju, who was driving the tractor and who was duly represented before the Tribunal, has not taken any pain to explain the circumstances in which the vehicle was being driven by a person having no valid and effective driving license. Even no reply appears to have been filed by Raju as well as owners of the tractor and there is neither any counter to the specific objection raised by the appellant before the Tribunal nor even before this court.

11. Taking into consideration the judgment referred to supra, the appellant-Insurance Company is certainly entitled to recover the claim allowed by the Tribunal in accordance with the procedure prescribed by law in these proceeding and without filing a civil suit in this regard.

12. In my view, taking into consideration the fact that even as per the disability certificate taken into consideration by the Tribunal, which is said to be 5%, the amount allowed cannot be said to be excessive or unreasonable as out of the said amount of Rs. 95,547/-, the major component apart from loss of income, is about medical bills, diet, hospitalisation, loss of amenities, pains and suffering etc. etc., which cannot be said to be excessive. However, since it is informed that only Rs. 25,000/- has been directed not to be disbursed, by this court to the claimant-respondent, let the said amount is directed to be returned back to the appellant-Insurance Company, however, with a direction to the injured respondent, Ashokraj, who may recover the same with interest by moving an appropriate application in the Tribunal itself in these proceedings to recover the said amount from the owners/driver of the offending vehicle.

13. The appellant is also permitted to recover the amount of compensation from the owners and driver of the vehicle involved in the accident in accordance with the procedure prescribed by law, before the Tribunal without filing of a separate suit, as observed earlier in this regard. Serious view has bee taken by this court as to why at the first instance the appellant made New India Assurance Company Ltd. as a party-respondent, as even before the Tribunal the name of New India Assurance company Ltd. has been deleted and none put in appearance on behalf of the New India Assurance Company Ltd. then what made the appellant to make it a party-respondent before this court putting a burden on the New India Assurance Company Ltd. for no fault of them. The counsel appearing for appellant had also not brought this fact to the notice of this court though the appellant itself mentions against the name of New India Assurance Company Ltd. as "deleted" and at-least at the time of issuance of notice, the counsel for the appellant ought to have brought it to the notice of the court and could have saved the public money. Though the court was constraint to impose cost on the appellant, however, taking into consideration that the amount involved is even

otherwise small in the present petition, and the appellant has paid the amount for no fault of it in the light of the observations made herein about license, the matter of levy of cost is dropped. Consequently, the appeal is allowed in the above terms with directions to the appellant as well as claimant to recover the amounts from the driver/owners in this very proceedings without instituting a separate suit in accordance with law. Needless to mention, the Tribunal shall put in every endeavour to recover the said amount as observed hereinbefore. No costs.